

CHAPTER 441

INSURANCE

SENATE BILL 08-011

BY SENATOR(S) Morse, Boyd, Isgar, Keller, Schwartz, Tapia, Tochtrop, Wiens, and Windels;
also REPRESENTATIVE(S) Massey, Borodkin, Labuda, Liston, McGihon, Soper, Buescher, McFadyen, Rice, Riesberg, and
Stafford.

AN ACT

**CONCERNING FUNDING FOR THE PROVISION OF UNCOMPENSATED TRAUMA CARE TO PERSONS
INJURED IN MOTOR VEHICLE ACCIDENTS IN COLORADO, AND MAKING AN APPROPRIATION
THEREFOR.**

Be it enacted by the General Assembly of the State of Colorado:

SECTION 1. 10-4-635, Colorado Revised Statutes, is amended to read:

10-4-635. Medical payments coverage - disclosure - definitions. (1) (a) ~~If an insurer makes available medical payments coverage in conjunction with the coverage required pursuant to section 10-4-620, such medical payments coverage shall provide for benefits of five thousand dollars, as well as any other benefit deemed appropriate by the insurer.~~ EXCEPT AS OTHERWISE PROVIDED IN THIS SUBSECTION (1), NO AUTOMOBILE LIABILITY OR MOTOR VEHICLE LIABILITY POLICY INSURING AGAINST LOSS RESULTING FROM LIABILITY IMPOSED BY LAW FOR BODILY INJURY OR DEATH SUFFERED BY ANY PERSON ARISING OUT OF THE OWNERSHIP, MAINTENANCE, OR USE OF A MOTOR VEHICLE SHALL BE DELIVERED OR ISSUED FOR DELIVERY IN THIS STATE UNLESS COVERAGE IS PROVIDED IN THE POLICY OR IN A SUPPLEMENTAL POLICY FOR MEDICAL PAYMENTS WITH BENEFITS OF FIVE THOUSAND DOLLARS FOR BODILY INJURY, SICKNESS, OR DISEASE RESULTING FROM THE OWNERSHIP, MAINTENANCE, OR USE OF THE MOTOR VEHICLE.

(b) A POLICY MAY BE ISSUED WITHOUT MEDICAL PAYMENTS COVERAGE ONLY IF THE NAMED INSURED REJECTS MEDICAL PAYMENTS COVERAGE IN WRITING OR IN THE SAME MEDIUM IN WHICH THE APPLICATION FOR THE POLICY WAS TAKEN. THE INSURER SHALL MAINTAIN PROOF THAT A NAMED INSURED REJECTED MEDICAL PAYMENTS COVERAGE FOR AT LEAST THREE YEARS AFTER THE DATE OF THE REJECTION, AND SUCH PROOF OF REJECTION SHALL BE PRESUMED VALID FOR ALL

Capital letters indicate new material added to existing statutes; dashes through words indicate deletions from existing statutes and such material not part of act.

INSURED UNDER THE POLICY, INCLUDING RESIDENT RELATIVES OF THE NAMED INSURED AND PERMISSIVE USERS OF THE MOTOR VEHICLE. AN AGENT OR INSURER THAT OBTAINS A REJECTION OF MEDICAL PAYMENTS COVERAGE FROM THE NAMED INSURED OR APPLICANT PURSUANT TO THIS SECTION SHALL NOT BE LIABLE TO THE INSURED OR ANY OTHER PERSON SEEKING BENEFITS UNDER THE NAMED INSURED'S POLICY FOR CLAIMS ARISING OUT OF OR RELATING TO THE REJECTION OF MEDICAL PAYMENTS COVERAGE.

(c) IF THE INSURER FAILS TO OFFER MEDICAL PAYMENTS COVERAGE OR FAILS TO MAINTAIN OR PROVIDE PROOF THAT THE NAMED INSURED REJECTED MEDICAL PAYMENTS COVERAGE IN THE MANNER REQUIRED BY THIS SECTION, THE INSURED'S POLICY SHALL BE PRESUMED TO INCLUDE MEDICAL PAYMENTS COVERAGE WITH BENEFITS OF FIVE THOUSAND DOLLARS.

(d) IF AN INSURED SELECTS LIMITS FOR MEDICAL PAYMENTS COVERAGE OR EXERCISES THE OPTION NOT TO PURCHASE THE COVERAGES DESCRIBED IN THIS SECTION, AN INSURER OR AFFILIATED INSURER SHALL NOT BE REQUIRED TO NOTIFY ANY POLICYHOLDER IN ANY RENEWAL OR REPLACEMENT POLICY OF THE AVAILABILITY OF MEDICAL PAYMENTS COVERAGE. HOWEVER, THE INSURED MAY MAKE A REQUEST FOR ADDITIONAL COVERAGE OR COVERAGE MORE EXTENSIVE THAN THAT PROVIDED ON A PRIOR POLICY.

(e) Nothing in this section shall be construed to limit any other coverage amounts being made available by an insurer.

(2) (a) ~~Repeated.~~ IF A POLICY CONTAINS MEDICAL PAYMENTS COVERAGE, MEDICAL PAYMENTS BENEFITS SHALL BE PAID TO PERSONS PROVIDING MEDICALLY NECESSARY AND ACCIDENT-RELATED TRAUMA CARE OR MEDICAL CARE. EXCEPT AS PROVIDED IN PARAGRAPHS (b), (c), AND (d) OF THIS SUBSECTION (2), PAYMENTS OF CLAIMS FOR MEDICAL PAYMENTS COVERAGE SHALL BE MADE IN ACCORDANCE WITH SECTION 10-4-642.

(b) UPON RECEIVING NOTICE, EITHER FROM A PROVIDER OR THE INSURED, OF AN ACCIDENT FOR WHICH THE MEDICAL PAYMENTS COVERAGE SPECIFIED IN THIS SECTION OR MEDICAL PAYMENTS COVERAGE IN A GREATER AMOUNT MAY APPLY, THE INSURER SHALL RESERVE FIVE THOUSAND DOLLARS OF THE MEDICAL PAYMENTS COVERAGE FOR THE PAYMENT OF TRAUMA CARE PROVIDED BY A LICENSED AIR AMBULANCE, LICENSED AMBULANCE, TRAUMA PHYSICIAN, OR TRAUMA CENTER IN THE FOLLOWING PRIORITY, AS APPLICABLE:

(I) BENEFITS SHALL BE PAID FIRST TO LICENSED AMBULANCES OR AIR AMBULANCES THAT PROVIDE TRAUMA CARE AT THE SCENE OF OR IMMEDIATELY AFTER THE MOTOR VEHICLE ACCIDENT, INCLUDING TRANSPORT TO OR FROM A TRAUMA CENTER.

(II) AFTER PAYMENTS TO PROVIDERS DESCRIBED IN SUBPARAGRAPH (I) OF THIS PARAGRAPH (b), BENEFITS SHALL BE PAID NEXT TO TRAUMA PHYSICIANS THAT PROVIDE TRAUMA CARE TO STABILIZE OR PROVIDE THE FIRST EPISODE OF CARE TO THE INJURED PERSON.

(III) AFTER PAYMENTS TO PROVIDERS DESCRIBED IN SUBPARAGRAPHS (I) AND (II)

OF THIS PARAGRAPH (b), BENEFITS SHALL BE PAID NEXT TO TRAUMA CENTERS DESIGNATED AS LEVEL IV OR V PURSUANT TO SECTION 25-3.5-703 (4), C.R.S., THAT PROVIDE TRAUMA CARE TO STABILIZE OR PROVIDE THE FIRST EPISODE OF CARE TO THE INJURED PERSON.

(IV) AFTER PAYMENTS TO PROVIDERS DESCRIBED IN SUBPARAGRAPHS (I), (II), AND (III) OF THIS PARAGRAPH (b), BENEFITS SHALL BE PAID NEXT TO TRAUMA CENTERS DESIGNATED AS LEVEL I, II, OR III OR AS A REGIONAL PEDIATRIC TRAUMA CENTER PURSUANT TO SECTION 25-3.5-703 (4), C.R.S., THAT PROVIDE TRAUMA CARE TO STABILIZE OR PROVIDE THE FIRST EPISODE OF CARE TO THE INJURED PERSON.

(c) THE RESERVE SHALL BE HELD AND USED TO PAY CLAIMS OF TRAUMA CARE PROVIDERS DESCRIBED IN THIS SUBSECTION (2) FOR NO MORE THAN THIRTY DAYS AFTER RECEIPT OF THE ACCIDENT NOTICE. AFTER THE THIRTY-DAY PERIOD, ANY AMOUNT OF THE RESERVE FOR WHICH THE INSURER HAS NOT RECEIVED A CLAIM FOR REIMBURSEMENT FROM A TRAUMA CARE PROVIDER DESCRIBED IN THIS SUBSECTION (2) MAY BE USED TO PAY ANY OTHER CLAIMS FOR REIMBURSEMENT SUBMITTED BY OTHER PROVIDERS.

(d) THE PERIODS SPECIFIED IN SECTION 10-4-642 FOR THE PROMPT PAYMENT OF MEDICAL PAYMENTS COVERAGE BENEFITS SHALL BE TOLLED FOR THE PERIOD THAT AN INSURER IS REQUIRED UNDER THIS SUBSECTION (2) TO HOLD PAYMENT OF A CLAIM FROM A PROVIDER THAT DID NOT PROVIDE TRAUMA CARE, BUT ONLY TO THE EXTENT THE MEDICAL PAYMENTS COVERAGE BENEFITS NOT HELD IN RESERVE ARE INSUFFICIENT TO PAY THE CLAIM.

(3) (a) AN INSURER PROVIDING BENEFITS UNDER MEDICAL PAYMENTS COVERAGE IN THE AMOUNT SPECIFIED IN THIS SECTION OR IN A GREATER AMOUNT THAN THE AMOUNT SPECIFIED IN THIS SECTION SHALL NOT HAVE A RIGHT TO RECOVER AGAINST AN OWNER, USER, OR OPERATOR OF A MOTOR VEHICLE, OR AGAINST ANY PERSON OR ORGANIZATION LEGALLY RESPONSIBLE FOR THE ACTS OR OMISSIONS OF SUCH PERSON, IN ANY ACTION FOR DAMAGES FOR BENEFITS PAID UNDER SUCH MEDICAL PAYMENTS COVERAGE. AN INSURER SHALL NOT HAVE A DIRECT CAUSE OF ACTION AGAINST AN ALLEGED TORTFEASOR FOR BENEFITS PAID UNDER MEDICAL PAYMENTS COVERAGE.

(b) NOTHING IN THIS SUBSECTION (3) SHALL BE CONSTRUED TO:

(I) MODIFY THE REQUIREMENTS OF SECTION 13-21-111.6, C.R.S., OR ANY REQUIREMENTS UNDER THE "WORKERS' COMPENSATION ACT OF COLORADO", ARTICLES 40 TO 47 OF TITLE 8, C.R.S.;

(II) PREVENT A PERSON TO WHOM BENEFITS ARE PAID UNDER MEDICAL PAYMENTS COVERAGE FROM OBTAINING RECOVERY OF BENEFITS AVAILABLE UNDER UNINSURED MOTORIST COVERAGE PURSUANT TO SECTION 10-4-609; OR

(III) AFFORD AN INSURER A CAUSE OF ACTION AGAINST A PERSON TO WHOM OR FOR WHOM THE MEDICAL PAYMENTS COVERAGE BENEFITS SPECIFIED IN THIS SECTION WERE PAID EXCEPT IN A CASE WHERE THE BENEFITS WERE PAID BY REASON OF FRAUD.

(4) THIS SECTION SHALL NOT APPLY TO:

(a) A PERSON OBTAINING AN AUTOMOBILE LIABILITY OR MOTOR VEHICLE POLICY INSURING AGAINST LOSS RESULTING FROM THE OWNERSHIP, MAINTENANCE, OR USE OF A MOTORCYCLE, MOTORSCOOTER, MOTORBICYCLE, MOTORIZED BICYCLE, OR TOY VEHICLE, AS DEFINED IN SECTION 42-1-102, C.R.S., A SNOWMOBILE, AS DEFINED IN SECTION 33-14-101, C.R.S., OR ANY VEHICLE DESIGNED PRIMARILY FOR USE OFF THE ROAD OR ON RAILS.

(b) A PERSON THAT HAS OBTAINED A CERTIFICATE OF SELF-INSURANCE FROM THE COMMISSIONER PURSUANT TO SECTION 10-4-624.

(5) AS USED IN THIS SECTION:

(a) "INJURED PERSON" MEANS THE INSURED, OR A PASSENGER WHO IS AUTHORIZED BY THE INSURED TO OCCUPY THE INSURED'S MOTOR VEHICLE, WHO SUSTAINS BODILY INJURY ARISING OUT OF THE USE OF THE INSURED'S MOTOR VEHICLE.

(b) "LICENSED AIR AMBULANCE" MEANS AN AIR AMBULANCE, AS DEFINED IN SECTION 25-3.5-103 (1), C.R.S., THAT IS LICENSED BY THE DEPARTMENT OF PUBLIC HEALTH AND ENVIRONMENT PURSUANT TO SECTION 25-3.5-307, C.R.S.

(c) "LICENSED AMBULANCE" MEANS AN AMBULANCE, AS DEFINED IN SECTION 25-3.5-103 (1.5), C.R.S., THAT IS LICENSED PURSUANT TO SECTION 25-3.5-301, C.R.S.

(d) "LICENSED HEALTH CARE PROVIDER" SHALL HAVE THE SAME MEANING AS SET FORTH IN SECTION 10-4-902, AND ALSO INCLUDES AN OCCUPATIONAL THERAPIST AS DESCRIBED IN SECTION 6-1-707 (1) (c), C.R.S.

(e) "MEDICAL CARE" MEANS ALL MEDICALLY NECESSARY AND ACCIDENT-RELATED HEALTH CARE AND REHABILITATION SERVICES PROVIDED BY A LICENSED HEALTH CARE PROVIDER TO A PERSON INJURED IN AN AUTOMOBILE ACCIDENT FOR WHICH BENEFITS UNDER THE TERMS OF THE MEDICAL PAYMENTS COVERAGE IN THE POLICY ARE PAYABLE.

(f) "PROVIDER" MEANS A LICENSED HEALTH CARE PROVIDER, LICENSED AIR AMBULANCE, LICENSED AMBULANCE, TRAUMA PHYSICIAN, OR TRAUMA CENTER.

(g) "STABILIZE" MEANS, WITH RESPECT TO A MEDICAL CONDITION RESULTING FROM A TRAUMA, TO PROVIDE SUCH MEDICAL TREATMENT OF THE CONDITION AS MAY BE NECESSARY TO ASSURE, WITHIN REASONABLE MEDICAL PROBABILITY, THAT NO MATERIAL DETERIORATION OF THE CONDITION IS LIKELY TO RESULT OR OCCUR DURING THE TRANSFER OF THE INDIVIDUAL TO OR FROM A TRAUMA CENTER.

(h) "TRAUMA" MEANS AN INJURY OR WOUND TO A LIVING PERSON CAUSED BY THE APPLICATION OF AN EXTERNAL PHYSICAL FORCE. TRAUMA INCLUDES ANY EVENT THAT THREATENS LIFE, LIMB, OR THE WELL-BEING OF AN INDIVIDUAL IN SUCH A MANNER THAT A PRUDENT LAY PERSON WOULD BELIEVE THAT IMMEDIATE MEDICAL CARE IS NEEDED.

(i) "TRAUMA CARE" MEANS CARE PROVIDED BY A LICENSED AMBULANCE OR AIR AMBULANCE, TRAUMA PHYSICIAN, OR TRAUMA CENTER TO A PERSON INJURED IN A MOTOR VEHICLE ACCIDENT FROM THE TIME THE ADMINISTRATION OF CARE BEGINS TO THE TIME THE PATIENT IS FULLY STABILIZED OR THROUGH THE FIRST EPISODE OF CARE, NOT TO EXCEED SEVENTY-TWO HOURS AFTER THE ADMINISTRATION OF CARE BEGINS. THE TERM INCLUDES A TRAUMA CARE SYSTEM, TRAUMA TRANSPORT PROTOCOLS, AND TRIAGE, AS DEFINED IN SECTION 25-3.5-703, C.R.S.

(j) "TRAUMA CENTER" MEANS THE EMERGENCY DEPARTMENT IN A LICENSED OR CERTIFIED HOSPITAL OR A HEALTH CARE FACILITY THAT IS DESIGNATED BY THE DEPARTMENT OF PUBLIC HEALTH AND ENVIRONMENT AS A LEVEL I, II, III, IV, OR V FACILITY OR AS A REGIONAL PEDIATRIC TRAUMA CENTER.

(k) "TRAUMA PHYSICIAN" MEANS A TRAUMA SURGEON, ORTHOPEDIC SURGEON, NEUROSURGEON, INTENSIVE CARE UNIT PHYSICIAN, ANESTHESIOLOGIST, OR PHYSICIAN WHO PROVIDES CARE IN A TRAUMA CENTER TO A TRAUMA PATIENT INJURED IN A MOTOR VEHICLE ACCIDENT.

SECTION 2. Appropriation. In addition to any other appropriation, there is hereby appropriated, out of any moneys in the division of insurance cash fund created in section 10-1-103 (3), Colorado Revised Statutes, not otherwise appropriated, to the department of regulatory agencies, for allocation to the division of insurance, for the fiscal year beginning July 1, 2008, the sum of ten thousand eight hundred forty-eight dollars (\$10,848) and 0.2 FTE, or so much thereof as may be necessary, for the implementation of this act.

SECTION 3. Effective date - applicability. (1) This act shall take effect January 1, 2009.

(2) However, if a referendum petition is filed against this act or an item, section, or part of this act during the 90-day period after final adjournment of the general assembly that is allowed for submitting a referendum petition pursuant to article V, section 1 (3) of the state constitution, then the act, item, section, or part, shall not take effect unless approved by the people at a biennial regular general election and shall take effect on the date specified in subsection (1) or on the date of the official declaration of the vote thereon by proclamation of the governor, whichever is later.

(3) The provisions of this act shall apply to automobile insurance policies issued, delivered, or renewed on or after the applicable effective date of this act.

Approved: June 5, 2008